IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7124 OF 2004

Atul Nanji Visaria ... Petitioner

versus

Arvind Ghevarchand Jain and ors.... Respondents

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Mr. A.G. Damle with Mr. M.P. Takavde, for the Petitioner.

Mr. A.M. Moghe, for the Respondents.

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CORAM : A.M.KHANWILKAR,J.

3rd September 2004

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Moghe waives notice for all the Respondents. As short question is involved, petition is taken up for final disposal forthwith by consent.

. This petition takes exception to the judgment and order passed by the City Civil Court, Greater Bombay, dated July 14, 2004, in

Notice of Motion No. 478 of 2004 in S.C. Suit No. 1999/2000. The said notice of motion was taken out by the Petitioner plaintiff for recall of order dated 12th January 2004 whereby the trial Court directed that the Petitioner's evidence be treated as closed. The Notice of motion is supported by affidvit. In affidavit, in particular para 2, the Petitioner has given circumstances and then proceeded to state that the Petitioner was delayed by five minutes in reaching the Court on 12th January 2004, when the order came to be passed by the trial Court treating his evidence as closed. The Court below has not accepted the explanation offered by the Petitioner and, instead, rejected the notice of motion taken out by the Petitioner. Before this Court, for the first time, no doubt, the Petitioner has placed on record the medical reports to support the assertion made by the Petitioner on affidavit in support of the notice of motion that the Petitioner was continuously undergoing medical treatment and was required to attend the hospital on 12th January 2004 toundergo medical treatment because of the seriousness of the injury, which was inflicted during the accident suffered by him. There is no

reason to doubt the correctness of the record produced before this Court which is only to reinforce the stand taken on affidavit before the lower Court. To my mind, interest of justice would be served if the Petitioner is given one more opportunity to proceed to adduce evidence by recalling the order dated 12th January 2004 passed by the trial Court treating the Petitioner's evidence as closed. The Petitioner will have to be put to terms for such indulgence being shown to the Petitioner. The Petitioner undertakes that he shall not ask for any adjournment on any count before the trial Court on future dates and shall extend full co-operation to the trial Court for early disposal of the suit. That assurance given on behalf of the Petitioner is accepted. The trial Court may put reasonable conditions as may be deemed appropriate to require the Petitioner to co-operate with the conduct of the trial. This petition succeeds. The impugned order dated 12th January 2004 and 13th July 2004 are set aside and, instead, the Notice of Motion No. 478 of 2004 is made absolute on condition that the Petitioner shall pay costs quantified at Rs.5,000/- to the Respondent towards the costs of

this proceedings. The costs be paid within three weeks from today failing which the order passed by the trial Court, which is impugned in this writ petition, will get revived. The parties to appear before the trial Court on 10th September 2004 which is the scheduled date of hearing and proceed with the matter. The Petitioner will make himself available for cross-examination on that date or on such other date, as may be convenient to the trial Court.

(A.M.KHANWILKAR,J.)